

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICOLE A ARENDS**  
Claimant

**TWOKAYS INC**  
Employer

**APPEAL 21A-UI-04707-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Nicole Arends (claimant) appealed a representative's July 22, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of March 22, 2020, because she had not made adequate arrangements for childcare, limiting her availability for work with Twokays (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2021. The claimant participated personally. The employer participated by Glenda Oliver, President.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 21A-UI-04707.S1 and 21A-UI-04708.S1 were heard at the same time.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 24, 2018, as a part-time sales person. The claimant requested time off because her nine-year-old daughter did not have childcare. The employer granted the claimant's request for time off. The claimant did not work due to lack of childcare from March 18, 2020, through July 6, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. Her weekly benefit amount was determined to be \$143.00. The claimant received benefits of \$143.00 per week from March 22, 2020, to the week ending June 6, 2020. This is a total of \$1,573.00 in state unemployment insurance benefits after the separation from employment. She also received Federal Pandemic Unemployment Compensation. She applied for Pandemic Unemployment Assistance (PUA) and in a decision dated August 22, 2020, was allowed PUA benefits.

A disqualification decision was mailed to the parties' last known address of record on July 22, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 3, 2020. The claimant filed an appeal on July 28, 2020, but the appeal was not established. She appealed again on February 4, 2021, when she received the overpayment decision.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant appealed within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

For the following reasons the administrative law judge finds the claimant is not able and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A,

subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(8) provides:

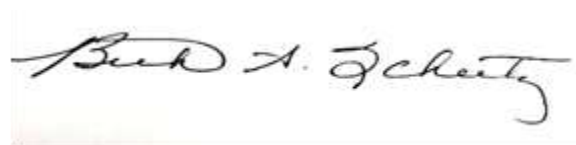
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for childcare.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is spending working hours caring for children, she is considered to be unavailable for work. The claimant was devoting her time and efforts to caring for her child. She is considered to be unavailable for work as of March 22, 2020. Benefits are denied as of March 22, 2020.

**DECISION:**

The July 22, 2020, reference 01, decision is affirmed. The appeal in this case was timely. The claimant was not able and available for work as of March 22, 2020. Benefits are denied as of March 22, 2020.



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Beth A. Scheetz  
Administrative Law Judge

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April 19, 2021  
Decision Dated and Mailed

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**Note to Claimant:**

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.